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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,239	04/14/2005	Michel Fontes	BJS-3665-132	8759
23117 7590 10/31/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER JEAN-LOUIS, SAMIRA JM				
ART UNIT		PAPER NUMBER		
1617				
MAIL DATE		DELIVERY MODE		
10/31/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/521,239	Applicant(s) FONTES ET AL.
Examiner SAMIRA JEAN-LOUIS	Art Unit 1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: See continuation sheet.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/SREENI PADMANABHAN/
Supervisory Patent Examiner, Art Unit 1617

Applicant's arguments that there is no motivation in Geffard to use vitamin C itself for therapy have been fully considered but are not found persuasive. Geffard particularly teaches the use of polylysine conjugates such as vitamin conjugates for the treatment of neurodegenerative diseases including Marie Charcot Tooth disease (CMT) (see col. 3, lines 7-8 and col. 5, lines 8-11). Examiner would like to further point out that because Geffard did not explicitly teach the Vit. C-conjugate for Charcot Marie Tooth disease, the rejection was rendered obvious under 103 (a) rather than anticipated. Moreover, Examiner is well aware that the polylysine conjugate plays an important role as Examiner clearly stated on the record that the polylysine conjugates helped in enhancing drug targeting to tissues (see Final Office Action, pg. 6, lines 1-3). Furthermore, Examiner would also like to point out that applicant's claims are directed to a method for treating CMT comprising vitamin C or a derivative thereof. The vitamin C polylysine conjugate is a derivative of vitamin C, consequently Geffard does indeed render obvious applicant's method of treatment.

Applicant's arguments that Djoneidi and Austria do not cure the deficiencies of Geffard have been fully considered. However, such arguments are not persuasive as Geffard's teachings are directed to vitamin C-polylysine conjugates for the treatment of neurodegenerative diseases which also include Charcot-Marie Tooth disease and therefore render obvious applicant's invention. Djoneidi was provided to demonstrate that Marie Charcot type 1 was the major form of CMT and thus one of ordinary skill would have found it obvious to treat such subtypes of patients as they make up the largest subpopulation of this disease. Austria, on the other hand, was provided to demonstrate that ascorbic acid is unstable and tend to degrade while vitamin C derivatives such as magnesium ascorbyl phosphate and ascorbyl palmitate were found to be more stable. Thus, one of ordinary skill in the art would have found it obvious to substitute the aforementioned derivatives for vitamin C as they are more stable in solution.